

Franchise and Concession Review Committee  
December 11, 2017

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PUBLIC HEARING

FRANCHISE AND CONCESSION REVIEW COMMITTEE

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253 Broadway,  
14th Floor Conference Room  
New York, New York

Monday, December 11, 2017  
2:48 p.m.

Franchise and Concession Review Committee  
December 11, 2017

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APPEARANCES:

Mayor:  
Peter Hatch

Clerk:  
Stephanie Ruiz

Office of the Mayor:  
Benjamin Furnas

Corporation Counsel:  
Sharon Cantor

Office of Management and Budget:  
Yvonne Quintian

Comptroller:  
Jennifer Conovitz

Borough President of Manhattan:  
James Caras

Borough President of Brooklyn:  
Tonya Cantlo-Cockfield

Borough President of Queens:  
Angelina Martinez-Rubio

Borough President of Staten Island:  
Lashay Young

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PROCEEDINGS

MR. HATCH: Good afternoon. The Public Hearing will now come to order. Will the clerk please call the roll?

THE CLERK: Mayor.

MR. HATCH: Here.

THE CLERK: Office of the Mayor.

MR. FURNAS: Here.

THE CLERK: Comptroller.

MS. CONOVITZ: Here.

THE CLERK: Corporation Counsel.

MS. CANTOR: Here.

THE CLERK: Office of Management and Budget.

MS. QUINTIAN: Here.

THE CLERK: President Borough of the Bronx.

(No response.)

THE CLERK: President Borough of Brooklyn.

MS. CANTLO-COCKFIELD: Here.

THE CLERK: President Borough of Manhattan.

MR. CARAS: Here.

THE CLERK: President Borough of

Franchise and Concession Review Committee  
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Queens.

MS. MARTINEZ-RUBIO: Here.

THE CLERK: President Borough of  
Staten Island.

MS. YOUNG: Here.

MR. HATCH: Welcome to this Public  
Hearing of the Franchise and Concession  
Review Committee. The hearing being  
conducted today has been publicly  
advertised in accordance with the New  
York City Charter and Concession Rules  
of the City of New York.

We want to be sure that anyone  
desiring to be heard has an opportunity  
to do so. All persons wishing to speak  
must fill out a request slip, which may  
be obtained from the Clerk. Each  
speaker will be allotted approximately  
three minutes. When you testify, please  
state your name and affiliation.

Will the Clerk please call the first  
calendar item?

THE CLERK: New York City Department  
of Parks and Recreation, Calendar Item

1  
2 1. In the matter of the intent to seek  
3 Franchise and Concession Review  
4 Committee approval to utilize a  
5 different procedure, pursuant to Section  
6 1-16 of the Concession Rules of the City  
7 of New York, to authorize the New York  
8 City Department of Parks and Recreation  
9 to enter into an amendment to the  
10 existing license agreement between Parks  
11 and State Cruises, LLC for the operation  
12 of three landing slips at The Battery  
13 for the purposes of embarking and  
14 discharging passengers on a regular  
15 schedule in the operation of passenger  
16 ferries between The Battery and Liberty  
17 and Ellis Islands, embarking and  
18 discharging passengers of vessels on  
19 sightseeing cruises and other ferry  
20 operations. Which may include, but are  
21 not limited to, ferry service to  
22 Governors Island, and day and night  
23 charters of vessels, owned, operated or  
24 chartered by Statue Cruises, LLC.

25 MR. HATCH: Alexander Han, Director

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of Concessions for Parks, will read into the record changes that have been made to the proposed amendment since its distribution to the FCRC.

MR. HAN: 26.2 of the license agreement has been amended so the title now reads, "Commercial General Liability Insurance, Protection and Identity Insurance, and Pollution Insurance."

Furthermore, there's a new subsection C, that has been added which reads, "If the licensee maintains marine protection and indemnity insurance, or vessel pollution insurance, or both. Such policies of insurance shall list the city, including it's officials and employees, as additional insurers. Such coverage maintained shall be an amount that is commercially reasonable."

MR. HATCH: Does anyone wish to testify?

(No response.)

MR. HATCH: If no one wishes to speak, that concludes today's hearing.

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MS. CONOVITZ: I have some questions.

MR. HATCH: All right.

MS. CONOVITZ: This is going to be addressed to Parks. We have a number of questions and I'll get to them. But first, in the connection with corporate structure and vendor responsibility; the vendor and the principle questionnaire is filed by Statue Cruises and a parent company, legal aid is required to disclose principle owners and affidavits.

We'd like you to clarify statues in corporate structure in relationship to Hornblower Holding, LLC and it's subsidiaries and its principle owner, Terry MacRae, and quite way of example, we just want to note that Statue Cruises and a recent passport vendor submission originally listed Hornblower Holding as an affiliate. And then in its 2007 proposal for this concession Statue Cruises, LLC identified Hornblower

1  
2 Yachts, Inc. as its parent company in  
3 the city vendor exchange system. And on  
4 Hornblower's website, hornblower.com,  
5 Statue is listed as a concession. And  
6 finally, in a different recent proposal  
7 for Parks and Concession's Hornblower  
8 Holding, also disclosed an extensive  
9 list of relevant subs, now, uber by way  
10 of example, but I want to go back to  
11 that original question about structure.

12 MR. HAN: Sure. To our best  
13 understanding Statue Cruises, LLC is a  
14 subsidiary of Liberty Cruises, LLC which  
15 is a subsidiary of Hornblower Group,  
16 Inc.

17 MS. CONOVITZ: And there is a no  
18 further clarification about various  
19 inconsistencies that may have been  
20 documented, or other things that you  
21 have learned since?

22 MR. HAN: As I understand it, last  
23 week Statue Cruises, LLC had signed into  
24 the passport to clarify and revise any  
25 inconsistencies. And you know, to our

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best understanding, the passenger files are correct and it reflects the statement that I just made in terms of corporate structure.

MS. CONOVITZ: HNY Ferry appears to be related to an affiliate of Hornblower, which operates the New York ferries that had an incident, with the Sanborn on 11/27/17; and he probably had six other ferries decommissioned due to leaks. The news reports indicate that the US Coast Guard is also investigating the incident.

The Parks responsibility determination doesn't address the above safety incident either, or ferry decommissioning, or the ongoing Coast Guard investigation. And it does not indicate Statue Cruises operation of different boats, or incidents for performance record, or incorporation of any safety precautions.

Can you explain why that's not in the responsibility determination?

1  
2 MR. HAN: Parks is unaware of  
3 misconduct or any safety issues  
4 regarding Statue Cruises, or it's  
5 operations. All Statue Cruises vessels  
6 are inspected by the US Coast Guard  
7 annually, as required. Statue Cruises  
8 has provided parts of the information  
9 for the safety of the operations and  
10 maintenance of their vessels.

11 MS. CONOVITZ: So you do not think  
12 it's relevant for the ordeal?

13 MR. HAN: No.

14 MS. CONOVITZ: And now, I just want  
15 to talk about the legal agreements and  
16 some of the provisions that we just had  
17 questions on.

18 Can you clarify the efforts that  
19 Parks made to negotiate higher annual  
20 minimum fees, or percentage of gross  
21 rate fees, in light of the records ship  
22 in 2016 of the new revenue generating  
23 concession activities from the new  
24 amendment.

25 MR. HAN: Parks had discussed the

1  
2 potential increase in license fees.  
3 However, the license fees did not  
4 increase. This is -- you know, I'd like  
5 to remind everybody that this is an  
6 extension of an existing agreement that  
7 is envisioned to be coterminous with the  
8 expiration of the National Parks Service  
9 agreement in 2019. When there is an  
10 opportunity to discuss a new agreement  
11 for a new operator, we'll certainly take  
12 a look at the fees again.

13 MS. CONOVITZ: Just as a follow-up  
14 to that, can you explain why then it  
15 would be appropriate to have two 1-year  
16 renewal options added to the Parks  
17 agreement which go beyond the 9/30/19  
18 expiration date of the National Parks  
19 Service contract. It would seem  
20 appropriate, under the circumstances,  
21 for this committee to review any renewal  
22 options at a later date.

23 MR. HAN: The renewal options have  
24 already been built in the license  
25 agreement. The intent of any renewal

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option is in the event that the National  
Parks Service further extends their  
current agreement with Statue Cruises,  
as it has done twice already.

MS. CONOVITZ: But they have not yet  
done so?

MR. HAN: No.

MS. CONOVITZ: And if that -- if we  
do it here now, and we put these  
discretionary renewal options in here,  
it would not come back before the FCRC,  
again, if they're, in fact, exercised.  
Is that correct?

MR. HAN: That's correct.

MS. CONOVITZ: I'll leave it at  
that.

There has also been a placeholder  
that was included for Statue Cruises.  
This is in the agreement or the draft  
agreement to pay a portion of revenue  
for the batteries and services  
maintenance and the operations area  
around the Amsterdam Brazilian. And we  
know that Parks will still need a 1B

1  
2 approval. The new contract has yet to  
3 be drafted with TBC. And from what we  
4 can see in the draft language, there is  
5 not yet an understanding of the  
6 underlying maintenance costs, or why  
7 additional funds would need to cover the  
8 existing costs. There also appears  
9 there's not yet an understanding of the  
10 revenue that would go to TBC. In light  
11 of this, we're questioning whether or  
12 not placeholder language is appropriate  
13 and for more information about the  
14 proposed payment structure to become  
15 available. I just wanted to get your  
16 thoughts on that.

17 MR. HAN: As you mentioned already,  
18 this is just a placeholder. In the  
19 event that FCRC eventually, if you're  
20 able to review this information or  
21 exercise this provision, we would not be  
22 required to amend it's agreement  
23 further.

24 However, this is a just a  
25 placeholder and we do not have the

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information, or the details, regarding the justification of that type of revenue share. That will come at a later date, if and when the agency feels that it is appropriate to do so.

MS. CONOVITZ: Do you know whether that this would come before the FCRC again?

MR. HAN: Yes.

MS. CONOVITZ: Can you talk about the insurance provisions that were amended; and I realize this may go to the law department, who has more expertise on this.

The question really goes to some sort of problems that could particularly involve bodily injury whether or not the city would be perspective.

MS. CANTOR: I'll try to address that.

The concessionaire always had an obligation to defend the city for injuries. When this came back to us, we became aware that it would be a very

1  
2 good provision for the city to add this  
3 Marines Protection Identity Insurance,  
4 because the concessionaire always had  
5 that responsibility. In this case, if  
6 there were a horrible, hopefully never,  
7 accident, if one of their vessels would  
8 have hit one of the piers landing spot,  
9 the CGL Insurance, which they  
10 maintained, would not cover that  
11 occurrence. This Marine Identity  
12 Protection Service would pick up that  
13 gap and put the obligation on the  
14 insurer with deeper pockets in the city  
15 for those kinds of --

16 MS. CONOVITZ: And it would not be  
17 capped.

18 MS. CANTOR: Well, they have limits  
19 in their insurance and I have to go  
20 through what they are. It's my  
21 understanding that from our insurance,  
22 experts and the law department, that those  
23 limits are higher than what we normally  
24 require; and I can get you the exact  
25 numbers.

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MS. CONOVITZ: And I guess the final note that we would make, is that we would like to see the effective date language in NewYork City Charter and Contract Registration requirement, which is the language that we have noted before.

I believe that is it.

MR. HATCH: Do any other members have questions?

(No response.)

MR. HATCH: All right.

Well, with that, we will conclude today's hearing. We ask that the reporter make the entire public hearing agenda, which was publicly available and distributed at this hearing as part of the final record of the proceeding.

The hearing is now closed. Thank you.

(Thereupon, the meeting was concluded at 3:00 P.M.)

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C E R T I F I C A T E  
STATE OF NEW YORK )  
: ss  
COUNTY OF NASSAU )

I, JAMES A. TETTA, a Notary Public within  
and for the State of New York, do hereby  
certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and that  
such an examination is a true record of the  
testimony given by such a witness.

I further certify that I am not related to  
any of these parties to this action by blood or  
marriage, and that I am not in any way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 11th day of December, 2017.



James Tetta

|  |  |                                  |   |   |
|--|--|----------------------------------|---|---|
| <b>11th</b> 17:19                                | 11:6,9,10,17,25<br>12:4,20,21 13:22<br>(11)      | <b>approval</b> 5:4<br>13:2      | <b>borough</b><br>2:12,13,15,16<br>3:16,19,22,25 4:4<br>(9) | <b>charter</b> 4:12   |
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**PUBLIC HEARING**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**MONDAY, DECEMBER 11, 2017 @ 2:30 P.M.**

**253 BROADWAY, NEW YORK, NY**

**NOTE: INDIVIDUALS REQUESTING SIGN LANGUAGE INTERPRETERS SHOULD CONTACT THE MAYOR'S OFFICE OF CONTRACT SERVICES, 253 BROADWAY, 9TH FL., NEW YORK, NEW YORK, N.Y. 10007 (212) 788-7490, NO LATER THAN SEVEN (7) BUSINESS DAYS PRIOR TO THE PUBLIC HEARING. TDD USERS SHOULD CALL VERIZON RELAY SERVICE.**

*Franchise and Concession Review Committee Joint Public Hearing  
Monday, December 11, 2017 @ 2:30 P.M.*

**NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION**

**No. 1:**       **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to authorize the New York City Department of Parks and Recreation (Parks) to enter into an amendment to the existing license agreement between Parks and Statue Cruises, LLC ("Licensee") for the operation of three landing slips at The Battery for the purposes of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to ferry service to Governors Island, and day and night charters of vessels, owned, operated or chartered by Licensee. The amendment, among other things, extends the agreement through September 30, 2019; with two (2) one (1)-year renewal options to be exercised at the sole discretion of Parks. Compensation to the City will be as follows: Licensee shall pay to the City license fees consisting of the greater of a guaranteed minimum annual fee versus a percentage of gross receipts. (January 1, 2018 – December 31, 2018): \$2,500,000 vs. 8.5%; (January 1, 2019 – September 30, 2019): \$1,875,000 vs. 8.5%; First Option Year (October 1, 2019 – September 30, 2020): \$2,500,000 vs. 8.5%; Second Option Year (October 1, 2020 – September 30, 2021): \$2,500,000 vs. 8.5%.